

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

TYSONS CORNER, VA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (202) 342-8625

EMAIL: bfreedson@kelleydrye.com

October 30, 2006

VIA HAND DELIVERY

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 04-223: In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area

Dear Ms. Dortch:

Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, Inc. (the "CLEC Parties"), through counsel, hereby submit for filing in the above-referenced proceeding their Reply to Oppositions, and four (4) copies of the same. Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions regarding this filing.

Respectfully submitted,



Brett Heather Freedson

cc: Jeremy Miller, Wireline Competition Bureau
Tim Stelzig, Wireline Competition Bureau

CERTIFICATE OF SERVICE

I, Brett Heather Freedson, hereby certify that true and correct copies of the foregoing Reply in WC Docket No. 04-223 were delivered via email and first-class mail, postage prepaid, this 30th day of October 2006, to the individuals on the following list:

Melissa Newman
Lynn Starr
Qwest Corporation
607 14th Street, N.W.
Suite 950
Washington, D.C. 20005
melissa.newman@qwest.com
lynn.starr@qwest.com

J.G. Harrington
Jason E. Rademacher
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohn.com
jrademacher@dowlohn.com


Brett Heather Freedson

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for Forbearance)	WC Docket No. 04-223
Pursuant to 47 U.S.C. § 160(c) in the Omaha)	
Metropolitan Statistical Area)	

REPLY

Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, Inc. (the “CLEC Parties”), through counsel, submit this Reply to the Opposition of Cox Communications, Inc. (“Cox”) and the Partial Opposition of Qwest Corporation (“Qwest”) in the above-captioned proceeding. The modest changes requested by the CLEC Parties to the Protective Order in the Qwest Omaha forbearance proceeding strike the appropriate balance between, on one hand, maintaining the confidentiality of business information disclosed to the Federal Communications Commission (“Commission”), and on the other hand, providing interested parties the ability to fully participate, through the comment process, in similar Commission forbearance proceedings, under 47 U.S.C. § 160.¹

Importantly, the relief requested by the CLEC Parties is fully consistent with Commission precedent. For the reasons set forth herein, and in the Motion to Modify Protective Order, the Commission should modify the Protective Order in the Qwest Omaha proceeding,² as

¹ Motion to Modify Protective Order of Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, Inc., WC Docket No. 04-223 (Oct. 11, 2006). The Commission has invited interested parties to participate in similar forbearance proceedings initiated by ACS of Anchorage, Inc. and the Verizon Telephone Companies. *See supra* notes 3 and 4.

² *In the Matter of the Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Protective Order, DA 04-1870 (rel. June 24, 2004) (“Qwest Protective Order”).

necessary to permit the use of confidential information by authorized parties for purposes of analyzing and responding to similar forbearance petitions, under 47 U.S.C. § 160, including the and the Petition of ACS of Anchorage³ and the Petitions of the Verizon Telephone Companies⁴ currently before the Commission.

The relief requested by the CLEC Parties would not subject any confidential information submitted to the Commission in the Qwest Omaha proceeding to general public disclosure, as Cox incorrectly suggests.⁵ To the contrary, such confidential information would remain subject to *all* of the safeguards provided by the Qwest Protective Order, except that certain parties would be permitted to use the information relied upon by the Commission in granting forbearance relief within the Omaha Metropolitan Statistical Area (MSA)⁶ for the limited purpose of commenting on similar forbearance requests, including the pending requests by ACS and Verizon. Importantly, as the Qwest Protective Order requires, any confidential information submitted to the Commission by Qwest or Cox in the Qwest Omaha proceeding would be made available only

³ See Amended Petition of ACS of Anchorage, Inc., Pursuant to Section 10 of the Communications Act of 1934, as Amended, For Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area, WC Docket No. 05-281 (filed Oct. 6, 2006) (the “ACS Petition”).

⁴ See Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area, WC Docket No. 06-172 (consolidated) (filed Sept. 6, 2006) (the “Verizon Petitions”).

⁵ Opposition of Cox Communications, Inc. to Motion to Modify Protective Order, WC Docket No. 04-223 (filed Oct. 23, 2006) (“Cox Opposition”) at 2.

⁶ *In the Matter of the Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170 (rel. Dec. 2, 2005) (“*Omaha Forbearance Order*”).

to those parties who expressly agree to honor the terms and conditions of the Qwest Protective Order, by executing and filing the appropriate Protective Order Acknowledgement.⁷ The modifications to the Qwest Protective Order requested by the CLEC Parties would extend the terms and conditions of the Qwest Protective Order to all interested parties that seek to use confidential information submitted by Qwest or Cox as part of the Qwest Omaha proceeding in analysis and advocacy related to the ACS and Verizon forbearance proceedings. Moreover, subject to terms and conditions of the Qwest Protective Order, any confidential information submitted to the Commission by Cox or Qwest would be redacted from public filings. This request is reasonable in scope, and would not frustrate the expectations of Qwest and Cox that their confidential business information would be used only in a manner that protects against competitive harms.

On balance, the modest relief requested by the CLEC Parties is fully warranted by the important public interest considerations that such relief would serve. As discussed more fully in the Motion to Modify Protective Order, access to and use of the confidential information relied on by the Commission in the *Omaha Forbearance Order* is critical to allowing interested parties to properly assess whether the market-specific data submitted to the Commission in the Verizon Petitions or the ACS Petition satisfies the requirements of 47 U.S.C. § 160. Moreover, without modification, the Qwest Protective Order would foreclose interested parties from fully participating in those forbearance proceedings, particularly to the extent that the petitioning party

⁷ Protective Order at ¶ 3(a) and Attachment A. Moreover, Cox's allegation that the relief sought by the CLEC Parties would permit disclosure of protected information to entities that have no nexus to the Omaha proceeding fails to acknowledge that each of the CLEC Parties is a party to the Omaha proceeding and each previously executed the Protective Order Acknowledgment. Cox Opposition at 3. The instant motion is necessary only because those parties are precluded from utilizing the Omaha proceeding data when participating in related forbearance dockets.

has based its forbearance relief request on the precedent established by the *Omaha Forbearance Order* and to the extent the Commission chooses to utilize the framework established in the *Omaha Forbearance Order* to decide other forbearance petitions.⁸

The modifications to the Qwest Protective Order requested by the CLEC Parties are fully consistent with Commission precedent. In particular, the Commission, in its *Access Charge Reform* proceeding, granted a motion to modify a protective order to permit broader uses of protected information where, as here, such uses would provide interested parties a meaningful opportunity to more fully participate in other Commission proceedings.⁹ Importantly, under the circumstances reviewed by the Commission in its *Access Charge Reform* proceeding, the Commission was persuaded that existing safeguards, under the protective order, would adequately guard the interests of parties that submitted to the Commission confidential or commercially sensitive information.¹⁰

There is excellent reason for the Commission to modify the Protective Order to permit interested parties that have signed the Protective Order Acknowledgement in the Qwest Omaha proceeding to use all confidential information submitted to the Commission in that proceeding for the limited purposes of analyzing and responding to other similar forbearance petitions,

⁸ ACS and Verizon have, in fact, based their forbearance petitions and related advocacy substantially on the precedent established by the *Omaha Forbearance Order*. See e.g. Verizon Petitions (Boston MSA) 3, 6-7, 14-18, 21-27; see also *Ex Parte* Letter from Karen Brinkmann, Counsel to ACS of Anchorage to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 8, 2006) at 6.

⁹ *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low Volume Long Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249 and 96-45, Order, DA 02-1027, 17 FCC Rcd 8252 ¶ 7 (rel. May 6, 2002). Importantly, the Commission granted modifications requested by the National Association of State Utility Consumer Advocates (“NASUCA”) to its protective order nearly two years after the date on which the protective order originally was released.

¹⁰ See *id.* at ¶ 8.

including the ACS and Verizon petitions. At a minimum, however, the Commission should grant the relief suggested by Qwest and permit the unredacted version of the Commission's *Omaha Forbearance Order* to be used, subject to the Qwest Protective Order, in the Verizon and ACS forbearance dockets.¹¹ As Qwest acknowledges, "it makes sense that the unredacted *Omaha Order* be available to those analyzing the precedential impact of the *Omaha Order* itself."¹²

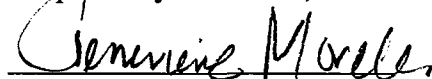
¹¹ Partial Opposition of Qwest Corporation to Motion to Modify Protective Order, WC Docket No. 04-223 (filed Oct. 23, 2006) ("Qwest Partial Opposition") at 3-4.

¹² *Id.* at 3.

CONCLUSION

For the reasons set forth herein, and in the Motion to Modify Protective Order, the Commission should modify the Protective Order in the above-captioned proceeding to permit the use of confidential information submitted in the Qwest Omaha proceeding by authorized parties for purposes of analyzing and responding to similar forbearance petitions, under 47 U.S.C. § 160, including the Petition of ACS of Anchorage and the Petitions of the Verizon Telephone Companies. At a minimum, the Commission should grant the relief suggested by Qwest and permit the unredacted version of the Commission's *Omaha Forbearance Order* to be used, subject to the Qwest Protective Order, in the ACS and Verizon forbearance proceedings.

Respectfully submitted,



Brad E. Mutschelknaus

Genevieve Morelli

Thomas A. Cohen

Kelley Drye & Warren LLP

3050 K Street, N.W.

Suite 400

Washington, D.C. 20007

Counsel to Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, Inc.

Dated: October 30, 2006